1952

File No. O Watan/52
Legal Department

A BRANCH

Subject:—

Opinions under the Bombay
Hereditary Of[illegible] 1874

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File No. O Watan/52.

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C O N T E N T S.

Legal Department File No.O. Watan/52

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Legal Department.

R.L.No. 26341
19-12-51

In this opinion No. 14603, dated the 4th September 1951 the R.L.A. opined that as the procurement work is neither part of the customary service nor one of the duties imposed by section 17 of the Land Revenue Code, Shri Rajadhyax cannot be held to be guilty of misconduct under section 57 of the Bombay Hereditary Offices Act, Civil Supplies Department appears to be of the opinion that under section 17 of the Bombay Land Revenue Code the State Government is competent to callk upon the Talathi and circle staff, including Kulkarnis, to do procurement work. That procurement work forms part of the legitimate duties of Kulkarnis and consequently action can be taken under section 57 of the Bombay Hereditary Offices Act for misconduct of Shri Rajadhyax in connection with the procurement workl R.L.A. is requested to reconsider his opinion.

There are no grounds for reconsideration. Section 17 of the Bombay Land Revenue Code, provides:

> "Subject to the general orders of the provincial Government, the Collector shall prescribe from time to time what registers, accounts, and other records, shall be kept by the village Accountant. It shall also be the duty of the village Accountant to prepare whenyer called upon by the Patel of his village or by any superior Revenue or Police Officer of the taluka or district to do so, all writings connected with the concerns of the village which are required either for the use of the Central or the Provincial Government or the public, such as notices, reports of inquists, and depositions and examinations in criminal matters."

It is apparent from this provision that the Talathi or the Kulkarni is the village registrar or the accountant. The General orders which can be issued by the Provincial Government under section 17 would evidently refer to registers or accounts or other records and writings which are required to be kept or done by the village Accountant. Apparently, therefore, the Provincial Government can issue in order under this section requiring the village Accountant to do writing or to keep accounts and registers in respect of the procurement work and no order can be issued by Government

requiring the village Accountant to do the procurement work itself. Consequently, the view taken by the civil Civil Supplies Department that under that provision that State Government can call upon the Talathis, the circle staff including Kulkarnis to do the procurement work is not correct. Shri Rajadhyax appears to be guilty of misconduct in connection with the procurement of foodgrains and not in connection with the keeping of any accounts, registers or writings in respect of the procurement work. Consequently, section 17 will have no application and no action can be taken against him under section 57 of the Bombay Hereditary Offices Act. In the circumstances, there are absolutely no reasons for the reconsideration of the opinion already given.

Sd/-
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Additional Secretary to Government.

U.R.to C.S.D. No. 277 dated, 10th January 1952.

N.R.D.
14-1-52
C.A

LEGAL DEPARTMENT.
R.I.No. 25(94)/10-12-51

It appears from the Kolhapur Divorce Rules in the Kolhapur Digest of Hindu Law that a divorce could be granted by the Court issuing the required decree(vide rule 7); also in the case of divorce by consent the deed of consent was required to be registered after obtaining the sanction of the Court(vide rule 26). There appears, therefore, to be some force in the contention raised by the applicant that no documentary evidence had been produced against here. R.D. should make inquiry whether the Kolhapur Digest of Hindu Law was applied to kapsi Jahangir.

Sd/-
10-1

Additional Secretary to Government.

U.O. to R.O.No. 308 dated the 11th January 1952.

R.D.
14-1-52
C.4

Legal Department.

R.I.M. 3007/12-2-52

In the circumstance now reported by the Collector of Kalhapur the order of the Jaghirdar of Kapshi may be allowed to stand. It would be open to Smt. Sahboo to establish her claim in a Court of law. The view expressed in paragraph 2 of the Revenue Department note at page 13 ante is correct.

Sd/-
Iyer

Additional Secretary to Government.

R.I.M.
14-2-52
G.J.

U.O. to R.D.No. 2396, dated the 14th February 1952.

LEGAL DEPARTMENT
R.I.No. [illegible]
17-5-52.

Their question raised for the consideration of the R.L.A. is whether the patilki Watan Lands which have been recognised as the private property of the Raja of Jath can be subjected to the levy of of full assessment.

2. As observed by the R.L.A. in his Opinion No. 6330, dated 29-5-1951 article 9 of the Agreement of merger cannot be construed as creating a a new tenure in favour of Ruleers or conferring on them rights higher than or different from those which which they had before the merger in regard to the properties recognised to be private propeties. Whatever incidents attached to the said properties before the merger would continue to be so attached thereafter. If therefore the patilki Watan lands in question were before merger, not subjected to levy of full assessment, they cannot be so subjected now merely on the ground of their having been included in the list of private properties.

Sd/-
25-3

Additional Secretary to Government.

U.R. to R.D. No. 8969 dated the 26th March, 1952.

M.R.D.
14-6-52
C.4

The Baroda Vatan Rules have been continued in [illegible] under the Bombay Merged States(Laws) Act, 1950. Under G.R.,R.D.,No. 6993/49, dated 19-9-50, the Darkhali Assistant at Baroda has been appointed as Darkhali Adhikari to exercise powers as such under the Baroda Vatan Rules.

During Baroda regime, the Vahivatdars(Mamlatdars), The Naib Subas (Prant Officers) and the Subas(Collectors), were authorised to exercise certain powers under the Baroda Vatan Rules subject to the limits specified in that behalf.

The Collector of Surat in his letter at page 1 ante has raised the point whether the Collectors, and Prant Officers could continue to exercise them the powers which were exercisable by the corresponding officers namely subas and Naib Subas respectively during Baroda Regime. The R.D. in its note at page 7 ante holds a view that the Darkhali Assistant, who is invested with the powers of Darkhali Adhikari, i.e. the head of the Darkhali Department, being an officer of the grade of a Deputy Collector, an anamolous position would arise in case the Collectorsand Prant Orrifers are allowed to exercise the powers exercisable by the Subas and Naib Subas under the Baroda Vatan Rules. The R.D. States that it would not be correct for an officer in the grade of a Deputy Collector to revise an order passedm by a Collector.R.D., therefore, requests the H.L.D. to advise.

R.R.D.
14-6-56
C.J.

Legal Department.

Attention of the R.D. is invited to Additional Secretary's opinion given in R.R. to R.D. No. 610, dated 26th January 1952 in which it has been suggested that with regard to the alienations in the former Baroda state, instructions should be issued to the effect that various functions to be done by the Bankhali officers should be performed by other revenue officers under the direction of the Collectorate pending further orders and pending the consideration of Government of the reports made by Shri Solanki and Dr. Patel.

Sd/-
22-5

Additional Secretary to Government.

U.R. to R.D. No. 3644, dated the 23rd May 1952.

H.R.D.
24-6-56
C.A

Neither the State Government nor the Bombay Provenue Tribunal has jurisdiction to interfere with the order passed by the Deputy Collector fixing the rent of the land under section 9(2) of the Bombay Hereditary offices Act.(see Kalu v. Secretary of State, 30 Bom.L.R. 1404). consequently, it would not be legally feasible for Government to adopt either of the two remedies suggested by Under Secretary, Revenue Department, in his note at p. 49 ante. However, section 9(2) of the Bombay Hereditary offices Act does not preclude the District Deputy Collectorfrom altering the rent previously fixed should circumstances justify such a course. Government may, therefore, reject the application of Shrimati Kamlabai Karulkar on the ground of want of jurisdiction and the District Deput Coppector may be instructed to revise his order fixing the rent proportionate to the area and value of the lands in possession of each party should an application be made by Shrimati Kamlabai Karulkar for that purpose.

Sd/-
25-7

Remembrancer of Legal Affairs.

U.R. to R.D. No. 1,401 dated the 28th July 1952.

R.R.D.
14-6-56
C.A

L.D.R.I.No. 6326 dated the 31-3-52.

Submitted.

This relates to a dispute between the Jahagirdar of Taloda and Government Officers regarding the right of the former to make appointments of Jagiyas in the Taloda village. The village Taloda is an alienated village but provisions of ChaptersVIII to X of the Land Revenue Code have been extended to it though the agreement under section 216L.R.C., is not forthcoming. The village contains a Kadim Inam comprising an area of 351 acres and 35 gunthas assessed at Rs. 1047-6-0 which has been assigned for the remuneration of Patil Jagiya officiators. The land, it is stated, is not subjected to judi and the whole profit of the land is enjoued by the officiators. The right of appointing jagiyas in this village(inferior village servants Class IV), is being exercised the Jahagirdar and he claims that this right by him and his ancestors since 1868 and even before that date. The right appears to have been evidenced by a Watan Thorav of 1898 and by an entry in the Patil Watan Register.In 1945, this right of the Jahagirdar was disputed by the Revenue Officers; but the Commissioner, Central Division, decided the case in favour of the Inamdar observing that "From the original Watan Thorav of 1898 it is clear that the Jahagirdar's right to appointment of Jagalia officiators at the village has been recognised and that he has exercised it to this date. In these circumstances, it would not be proper and and equitable to disturb the present arrangement. At the most the Jahagirdar may be advised to make the appointment of the Jagalia Officiators in consultation with the Mamlatdar(Vide Commissioner's Order No. W.T.N.W.R. 3/113 dated 27-6-1945). The Commissioner also held that legislation will have to be promoted to deprive the Jahagirdar of his right tom made the --

After this order the matter appear to have rested there for some time. But the Collector of West Khandesh now considers that orders of the Commissioner passed in 1945 are merely advisoryas theyare based on custm which has no legal sanction and in the circumstances he had sought orders of Government for discontinuance of the practice. He is of the opinion that as there is no order of Government under section 84 of the Watan Act authorising the Jahagirdar to exercise the powers of appointment, he cannot legally exercise the right claimed. R.D. considers that administratively it is desirable to discontinue the practice of allowing the Jahagirdar to make the appointments; but in view of Commissioners' opinion, R,L.A. is requested to advise whether the Inamdar can be stopped from exercising the right by executive orders or whether legislation would be necessary.

M.R.D.
14-6-56
C.4

Office of the R.L.A.

Before the passing of the Watan Act of 1874 Government used to permit certain Inamdars to nominate Inferior Village Servants for alienated villages subject to the general control of the Collector. After the Watan Act came into force the power to appoint such village servants village servants vested in the Collector of the District. Section 84 however enabled the Government to confer these powers on Inamdars of alienated villages in proper cases. It is not disputed in this case that no such powers had been conferred on the Inamdar of Taloda. But it appears that he had been exercising these powers from 1898 under a Watan Thareo accepted by the Prant Officer without the sanction of the Government. The long practice will not however have the effect of an order under section 84 of the Watan Act. The practice being illegal may be discontinued by an executive order.

However, Legislation has been introduced to abolish personal Inams and all the rights and privileges of such Inamdars. When the Bill now before the Bombay Legislature becomes Law the right of the Jahagirdar of Taloda to appointment Jagalyas, assuming that such right exists, will automatically come to an end. No immediate action seems to be therefore necessary .

Sd/-
18-8

Sumbrancer of Legal Affairs.

U.R. to R.D. No. 1939 dated the 19th August 1952.

M.R.D. -
14-6-56
C.4

18658 of 4-8-1952.

Submitted with reference to the Revenue Department note at pages 61-62 ante. This is in connection with the appeal made by one Dado Ramchandra Kulkarni requesting that his name may be entered as the Nav-wala of the Kulkarni Watan property at the village of Varnur, Taluka Kagal, District Kolhapur, in the place of one Narhar Hanmant alias Appaji Waman Kulkarni, the present holder. There are two Sudu Tarafs of eight annas each in the said Kulkarnichi Watan. One Waman Appaji Kulkarni was the nav-wala of the eight annas tarafs. After his death in 1919 his widow Krishnabai applied for sanction to adopt a son in 1925, but her request was not granted. However on 25-9-1930 she adopted Applaji and applied on the same day to the Maharaja of Kolhapur for ex-post facto sanction which was granted on 30th June 1934. Krishnabai died on 9th February 1938 and in the heirship inquiry the name of the adoptee Shri Appaji was ordered by the Subaghatdar of Kagal(Deshmukh) to be entered as the Nav-wala(Order No. 3Dated 27-2-43). In the meanwhile one of the sub-sharers Shrimati Radhabai Rangji died without heirs in the year 1927 and the lands standing in her name went into the possession of Shri Dado Ramchandra, the present applicant. Shri Appaji Waman then filed Civil Suit No. 93 of 1946 (subsequently numbered 16 of 1948) for possession of property in the hands of Dado Ramchandra . Two issues were raised in this suit; (1) whether Appaji was validly adopted; and (2) whether the suit was filed in time. The lower court answered the first issue in the affirmative and the second inthe negative . Appaji Waman therefore filed appeal No. 209 of 1949 which was decided by the Assistant Judge, Kolhapur, on 19-12-1950. The Assistant Judge answered both the issues in the negative. Relying on the Hukum

P.T.O

No. 27 of 1914, the Assistant Judge expressed the view inter alia that a prior sanction for adoption alone was necessary. Appaji Waman did not file any further appeals. The petitioner Shri Dado Ramchandra contends that in view of the Assistant Judge's decision Appaji Waman is a stranger to the Watan and that he alone as the eldest member in the next breanh of the family is entitled to the Watan Property. In these circumstances the Collector has raised the question whether Shri Appaji Waman should be dispossessed of the Watan property which should be handed over to Shri Dado Ramchandra.

3. Enquires made by the Revenue Department show that there are Hissedar Bhaubands in the Watan. According to Wat Hukum No. 27 of 1914 no adoption can be permitted whenthere are Hissedar Bhaubands. The revenue Department therefore considers that the Maharaja's order of 1934 granting expost facto sanction to the adoption was bad in law. The Revenue Department, therefofe, proposes that the the Maharaja's order of 1934 and the order passed by the Jahagirdar of Kagal in 1943 entering Shri Appaji's name to the Watan lands should both be set aside; and the Collector of Kolhapur should be directed to hold fresh heirship enquiry in the matter. The R.L.A. is requested to advise whether the action proposed by the R.D. would be in order.

M.R.D.
14-6-56
C.A

Legal Department.

The Assistant Judge, Kolhapur, while deciding Civil Appeal No. 283 of 1945 placed reliance upon Wat Hukum No. 27 of 1914 and came to the conclusion that it was not open to the Maharaja to grant ex-post facto sanction to the adoption of Appaji and, therefore, and adoption was not proper. In a recent decision of the Bombay High Court in Kolhapur Sepcial Appeals Nos. 229 and 239 of 1949 it has been held by Bavdekar and Dikshit JJ. that the various Wat Hukums issued by the Kolhapur Darbar relating to the succession to Watan lands should be held not to be applicable to Feudatory Jahagirs unless they were applied with the sanction of the Political Agent or the Feudatory Jahagirdar's Council. That decision also related to the Kagal Jahagir. It is not known whether Wat Hukum No. 27 of 1914 was so applied. If the Wat Hukum did not apply it would be no use challenging the validity of the Maharaja's order of 1934 granting ex-post facto sanction to the adoption. It is stated, moreover, that when another sub sharer Shrimati Radhabai Bapji died without heirs in the year 1927 the lands standing in her name were transferred to Dado Ramchandra. Probably Dado Ramchandra was then the only surviving lineal male descendant in the Kulkarni family. If so it is not clear why he did not attempt to get the propert standing in Krishnabai's name transferred to himself himself. In these circumstances the best course would be to leave the applicant to prove his claim in a Court of Law for restorat of lands and if he succeeds, to change the entry in the Reg in favour of the applicant. The proposal made by the Revo Department to hold a fresh hereship inquiry would not be proper.

Sd/-
8-9

Additional Secretary to Governm

U.R. 39 R.D.No. 1479/A dated the 10th September 1952.

R.R.D.
14-6-56
C.4

Revenue Department.

All the five pieces of land which were attached to the Talegaon Watan are at present in the possession of non-watandars. These persons have apparently applied to the State Government for sanction to lease the lands to the Bagalkot Cement Co. Under section 5 of the Bombay Hereditary Offices Act, 1874. But that section does not apply to alienations by non-watandars. Two conditions are necessary to make the provisions of section 5 apply to an alienation:(1) that the persons alienating must be a watandar; and(2) the property alienated must belong to his watan(vide Phadnis' Watan Act, P.31). As the applicants are not watandars the view expressed by the Collector that section 5 is not attracted is correct. The leases in favour of the Company by the present holders of the lands will not give the Company a legal right to continue in possession . If it is considered desirable that the Company should be entitled to have the enjoyment of all of these lands the proper thing will be to acquire them under the Land Acquisition Act at the cost of the Company.

Sd/-
12-9

Additional Secretary to Government.

U.R. to R.D., No. 1/902/A dated the 13rd September 1932.

14-6-56
C.A

Watan Act Section 2, 11 and property by devolution into beneficial possession of a persons most watandar whether alienation-

The view taken by the R.D. on the first point, namely, the succession of the opponents to the deceased Ramangouda in respect of the watan lands in preference to the applicant is correct. But the view taken by the R.D. on the second point that the possession of the applicant being referable to succession and not to alienation, action under section 11 or section 11A of the Watan Act was not proper is not correct. In Appeal No. 241 of 1931 from the decision of the Additional First Class Subordinate Judge, Dharwar in Special Suit No. 47 of 1930 Broomfield J. Held:

> "If Watan property passes into the hands of a stranger, though without any conveyance, as for instance by devolution or usurpation, there is equally an alienation in the watandar family ..... what is meant by alienation under section 11 of the Watan Act is only the passing of the Watan property into the ownership or beneficial possession of any person other than officiator or a person other than the officiator or a person not a watandar of the same watan as the case may be. No transfer or conveyance by a watandar is necessary at all."

It would, therefore, be apparent that the passing of the watan property by devolution into the beneficial possession of the applicant who is not a watander of the same watan would amount to alienation and consequently action under section 11 or section 11A of the Watan Act would be legal. It is suggested by R.D. that after the names of the opponents are entered as successors to the watan land, they may institute fresh proceedings for the restoration of the lands. It is notunderstood why the opponents should be required to institute fresh proceedings when their right to the watan lands is established and the applicant's possession is considered unlawful as being an alienation unwarranted by the watan law. In the circumstance, the order of the Prant Officer declaring the alineation to be null and void and restoring possession to the opponents appears to correct.

Sd/-
18-12
Additional Secretary to Government.

M.R.D.
15-6-56
C.4

U.R. to R.D. No. 21433/A dated the 19th December 1952.

Office of the R.L.A.

Watan Act; Rule 4 of Resumption Rules

Resumption of Compensation in respect of Watan land- Whether feasible.

It appears that Survey Nos.94,100 and 458 of Ahire in Haveli Taluka are Patilki Watan lands of the village and have been acquired by Government for the National Defence Academy. The amount of compensation has been credited to Government. The Collector of Poona considers that since the profits of the lands are not assigned as remuneration for the officiator and the officiator gets his remuneration according to Wingate scale, the compensation payable to the officiator under the Land Acquisition Act should be resumed on the ground that the amount of compensation can be considered excessive remuneration to the offeiator. Revenue Department agrees with the view of the Collector and theR.L.A. is requested to advise.

2. It is true that under Rule 4 of the Resumption Rules framed by Government in virture of powers conferred by ActXII of 1852, schedule B, sections 8 and 10, and by Bombay Act VII of 1863,section 2(3), Government can resume lands attached to the Patilki service or part thereof if the remuneration derived from the profits of such lands is considered unnecessarily high. The word'lands' as defined in section 32(B) of Bombay Act VII of 1863 shall, for the purposes of this Act be understood to include villages, portions of villages, shares of revenues thereof and landed estate of every description. By reason of acquisition the lands are no longer attached to the patilki service, and consequently, those lands cannot be resumed under rule 4 of the Resumption Rules. Further, that rule does not contemplate resumption of the cash value of such land lands which is payable to an offeiator on acquisition of these lands. Revnue Department Memorandum No.9748/49-M dated 22nd 1951 relied upon by the Collector of Poona, states that it would be more advantageous to resume the lands under the Resumption Rules and then dispose of the lands for the priper market price, which would bring a large amount of revenue to Government, in cases where valu valuable lands for the remuneration of a Patil are considered exeecessive remuneration. Apparently that memorandum has no application to the present case since the lands have ceased to be Patilki service lands. The view taken by the Collector is not correct and the compensation payable to the officiator cannot be resumed under the Resumption Rules.

P.T.O.

Sd/-
13-11

Remembrancer of Legal Affairs.

U.R.to R.D. No. 19053/A dated the 15th November 1952.

M.R.
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